

NOTICE

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2014 IL App (5th) 110474-U

CONSOLIDATED NOS. 5-11-0474 & 5-12-0002

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Marion County.
)	
v.)	No. 06-CF-239
)	
RAYMOND SIMER,)	Honorable
)	Sherri L. E. Tungate,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WEXSTTEN delivered the judgment of the court.
Presiding Justice Welch and Justice Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly dismissed the defendant's petitions for postconviction relief.

¶ 2 In June 2007, following a bench trial, the defendant, Raymond Simer, was convicted on three counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2004, 2006)). On direct appeal, this court affirmed his convictions. *People v. Simer*, No. 5-07-0579 (May 13, 2009) (unpublished order pursuant to Supreme Court Rule 23). The present appeal is from the circuit court's order dismissing the defendant's petitions for postconviction relief. For the reasons that follow, we affirm.

¶ 3 **BACKGROUND**

¶ 4 In June 2006, the State filed an information charging the defendant with three counts of predatory criminal sexual assault of a child. Count I alleged that, on April 16, 2006, the defendant placed his penis into A.R.'s mouth; count II alleged that, in the summer of 2005,

the defendant placed his penis into A.R.'s vagina; and count III alleged that, in the summer of 2005, the defendant placed a "sex toy" into A.R.'s vagina.

¶ 5 The evidence at trial revealed that in April 2006, following a "good touch/bad touch presentation" at her school, 10-year-old A.R. indicated to her mother that her maternal stepgrandfather, the defendant, had been sexually molesting her. A.R.'s mother took no immediate action in response to the complaint, so, a few days later, A.R. indicated the same thing to her father's live-in girlfriend, Casey Erlinger. Erlinger and A.R.'s paternal grandmother promptly took A.R. to the Centralia police department, where A.R. was interviewed by Sergeant Steve Prather. A.R. advised Prather that the defendant was her "grandpa" who watched her every day after school while her mother was at work. A.R. described various incidents of sexual abuse and assault and stated that such incidents "happened a lot." Aware that the defendant used to be a police officer for the City of Centralia, Prather turned the investigation over to the Illinois State Police.

¶ 6 Three days later, Illinois State Police Investigator Kelly Hodge interviewed A.R. regarding her allegations against the defendant. A.R. told Hodge that the defendant had first touched her inappropriately when she was approximately five and that the first incident that she could recall was his touching her buttocks. She further indicated that, over the years, the defendant's conduct had escalated into acts of sexual penetration. She described in detail several specific instances of sexual abuse and assault, and she explained that the defendant referred to what they did as playing the "touching game." She indicated that, although she did not like playing the "touching game," the defendant made her feel as if she had no choice but to play. The defendant also told her, "[T]hat's what families do." A.R. indicated that the defendant had sexually assaulted her by putting his mouth on her vagina, placing his penis in her mouth, and rubbing his penis against her vagina, as recently as 10 days prior to the interview. A.R. advised that the defendant had "always told her not to tell" and had also told

her that "he would hurt her mom if she ever told anybody."

¶ 7 After interviewing A.R., Hodge obtained a warrant to search the defendant's residence and trailer and further obtained authorization to use an eavesdropping device. See 725 ILCS 5/108-3, 108A-1 to 108A-11 (West 2006). The following morning, with a recording device in place, Hodge had A.R. call the defendant from her school and tell him that, following a good touch/bad touch presentation, she had reported "a bad touch" but had not disclosed who had touched her. A.R. advised the defendant that school officials were asking her questions about her complaint, and she did not know what to tell them. In response, the defendant stated, *inter alia*, that he did not know what she was talking about. When she directly accused him and referred to specific things that he had allegedly done to her, he denied her accusations and insisted that she had previously told him that someone named "Jimmy was doing those things with [her]." When she reiterated that she had not told anyone that he had touched her, he said, "You better never" and again referenced "Jimmy." When she asked him what she should say, he said, "That Jimmy was doin' that, that's what you told me." When she asked him a second time what she should say, he answered, "Nothing" and again indicated that she had told him that "Jimmy" had molested her. At the defendant's trial, a recording of the conversation was played, and the State argued that the defendant's comments to A.R. were his attempts to "prompt her into saying it was someone else."

¶ 8 At the defendant's trial, A.R.'s statements to Erlinger, Prather, and Hodge were admitted as substantive evidence (see 725 ILCS 5/115-10 (West 2006)), and A.R. was permitted to testify via closed-circuit television (see 725 ILCS 5/106B-5 (West 2006)). A.R.'s testimony included her descriptions of the specific acts set forth in the State's information, and she reiterated much of what she had previously told Prather and Hodge. A.R. testified that in 2005, when she was nine, the defendant would rub his penis against her vagina and that the defendant also inserted sex toys into her vagina. A.R. testified that on

April 15, 2006, when she was 10, the defendant rubbed his penis against her vagina. A.R. further testified that the defendant placed his penis in her mouth when she was 10. She testified that the defendant had told her that "he would hurt [her] mom and [her] dad" if she ever told anyone what he was doing, but the good touch/bad touch presentation at her school "convinced [her] that [she] needed to tell." She also denied having ever threatened to accuse the defendant if he refused to buy her things.

¶ 9 The defendant testified that he had lived with A.R.'s grandmother since 2005. The defendant testified that A.R.'s mother assisted him in household duties after he had had surgery in April 2006 for hiatal hernia. The defendant testified that he had been hospitalized from April 18 through April 24, 2006. The defendant testified that A.R. would sometimes return from her father's home smelling of marijuana and that he was monitoring A.R.'s father's conduct pursuant to a file, which disappeared during this hospitalization. The defendant testified that in May or June 2006, A.R.'s mother was arrested for stealing money from his bank account.

¶ 10 The circuit court found the defendant guilty as charged on all three counts of the State's information. The defendant appealed his conviction, arguing that his convictions should be reversed because the circuit court erred in allowing A.R. to testify by means of closed-circuit television. This court affirmed the defendant's convictions on appeal. *People v. Simer*, No. 5-07-0579 (May 13, 2009) (unpublished order pursuant to Supreme Court Rule 23).

¶ 11 On May 3, 2010, the defendant filed a *pro se* petition for postconviction relief. In his petition, the defendant alleged that his appellate counsel was ineffective, that his trial counsel was ineffective, and that he was denied due process of law. In a sworn affidavit attached to the *pro se* petition, the defendant attested that he had told his trial counsel that he believed that A.R.'s father made the false allegations to "get [him] out of the way" and that trial

counsel should have filed a motion to suppress.

¶ 12 On May 26, 2010, the circuit court docketed that petition for further consideration and appointed counsel to represent the defendant. On October 5, 2010, the defendant, through appointed counsel, filed an amended petition for postconviction relief. The amended petition incorporated by reference the allegations and supporting documents in the defendant's *pro se* petition. In the amended petition, the defendant alleged that his trial counsel was ineffective for his "failure to adequately investigate the motivations of the named victim and her family in making the claims of which the [defendant] was accused and later convicted." Specifically, the defendant alleged that trial counsel failed to investigate whether the complainant and her family had acted in retaliation for the defendant's filing of a complaint with the Department of Children and Family Services (DCFS) about the conduct of A.R. and her care. The defendant also alleged that A.R. had made a prior false allegation of sexual misconduct against her stepsiblings that trial counsel had failed to investigate. The defendant again attached his own affidavit, attesting that he had made a claim to DCFS about the conduct of A.R. and her care and that trial counsel did not procure the complaint document and explore whether or not the victim was motivated to testify falsely because of the complaint. The defendant also attested that A.R. made a prior false allegation of sexual misconduct against her stepbrother and stepsister. On October 26, 2010, the State filed a motion to dismiss the defendant's petitions.

¶ 13 On September 14, 2011, the defendant, through counsel, filed a supplemental amended petition for postconviction relief. The defendant further alleged that he had a hiatal hernia condition and was hospitalized from April 17 through April 24, 2006, undergoing surgery to correct the condition. The defendant alleged that the hernia condition would have rendered the alleged sexual penetration on April 15, 2006, physically impossible for the defendant to have committed, and he alleged that trial counsel was ineffective for failing to

investigate the matter. In an affidavit attached to the supplemental amended petition, the defendant stated that the hiatal hernia was a life-threatening condition that would not allow sexual activity. The defendant stated in the affidavit that he could not have committed a sexual act because he was "bedfast" and "was assigned a personal assistant." On September 20, 2011, the State filed a motion to dismiss the defendant's supplemental amended petition for postconviction relief. The State asserted that the defendant's contentions lacked merit.

¶ 14 On October 18, 2011, at the hearing on the defendant's postconviction pleadings, postconviction defense counsel stated that although the DCFS complaint "may have come after the fact of the trial," the defendant may have suggested previous to trial that A.R.'s father was not an appropriate caretaker and that he may report them, thus making trial counsel's failure to investigate or present such evidence unreasonable. When addressing the defendant's contention that hiatal hernia prevented the possibility of sexual abuse, the State noted that A.R.'s testimony did not indicate whether the defendant's penis was erect on that date nor whether he ejaculated. The State noted that A.R.'s testimony revealed merely that the defendant committed predatory criminal sexual assault and that the defendant did not set forth how his hiatal hernia would have made such act impossible. After the hearing, the circuit court granted the State's motion to dismiss the defendant's petitions for postconviction relief. On November 1, 2011, the defendant filed a notice of appeal. On November 10, 2011, the defendant filed an amended notice of appeal.

¶ 15 On November 17, 2011, the defendant filed a *pro se* pleading requesting leave to file a "second post[]conviction petition." This *pro se* motion primarily elaborated on the claim raised in the previous supplemental amended postconviction petition. The defendant alleged that neither his trial counsel nor his postconviction counsel presented his medical reports to the circuit court. The defendant alleged that his postconviction counsel had been granted leave to obtain medical documentation supporting the claim of medical impossibility

concerning the April 15, 2006, allegations, but counsel had failed to procure the medical records. The defendant alleged that he had subsequently obtained the medical records on his own. The defendant alleged that the records would support his claim that he was medically incapable of committing the alleged offense on April 15, 2006. The defendant did not attach the records to his *pro se* pleading. The defendant alleged ineffective assistance of trial and postconviction counsel.

¶ 16 On December 2, 2011, the circuit court entered its order denying the defendant's request to file a second petition for postconviction relief. In its order, the circuit court noted that since filing his *pro se* petition, the defendant had appeared in court with his postconviction counsel 12 times, including the hearing held on October 18, 2011, and that counsel personally visited the defendant at the Lawrence Correctional Center on 2 occasions. The circuit court also noted that at a hearing held on May 31, 2011, the circuit court indicated in the docket sheet entry that the hearing would be reset to "continue to investigate new allegations concerning medical conditions that would have been a defense which was alleged to not have been investigated by earlier counsel." The circuit court concluded that the defendant failed to demonstrate any cause or prejudice to allow a successive petition for postconviction relief to be filed. On December 28, 2011, the defendant filed a *pro se* notice of appeal. On February 5, 2013, this court issued an order consolidating the defendant's appeals.

¶ 17 DISCUSSION

¶ 18 On appeal, the defendant argues that his postconviction pleadings demonstrate a substantial showing of trial counsel's ineffectiveness for failing to investigate available evidence to support his defense. The defendant requests this court to reverse the circuit court's dismissal and remand for an evidentiary hearing.

¶ 19 The Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 to 122-7 (West 2010))

sets forth a procedural mechanism through which a defendant can claim that "in the proceedings which resulted in his or her conviction there was a substantial denial of his or her rights under the Constitution of the United States or of the State of Illinois or both." 725 ILCS 5/122-1(a)(1) (West 2010). The Act provides a three-stage process for the adjudication of postconviction petitions in noncapital cases. *People v. Bocclair*, 202 Ill. 2d 89, 99 (2002). At the first stage, the trial court independently assesses the defendant's petition, and if the court determines that the petition is "frivolous" or "patently without merit," the court can dismiss it. 725 ILCS 5/122-2.1(a)(2) (West 2010). If a petition is not dismissed at the first stage, it advances to the second stage, where the State can move to dismiss the petition. 725 ILCS 5/122-2.1(b), 122-4, 122-5 (West 2010). At the second stage, the trial court determines whether the defendant has made a substantial showing of a constitutional violation, and if a substantial showing is made, the petition proceeds to the third stage for an evidentiary hearing; if no substantial showing is made, the petition is dismissed. *People v. Edwards*, 197 Ill. 2d 239, 245 (2001). "At both the second stage and the third stage, the defendant bears the burden of making a substantial showing that his conviction resulted from a violation of a constitutional right." *People v. Lane*, 398 Ill. App. 3d 287, 296 (2010). "The dismissal of a postconviction petition without an evidentiary hearing is reviewed *de novo*." *People v. Hall*, 217 Ill. 2d 324, 334 (2005).

¶ 20 A criminal defendant is guaranteed the right to the effective assistance of counsel under both the United States Constitution and the Illinois Constitution. *People v. Mata*, 217 Ill. 2d 535, 554 (2005). To succeed on a claim of ineffective assistance of trial counsel, a defendant must satisfy the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), *i.e.*, a defendant must show "(1) that his attorney's performance fell below an objective standard of reasonableness and (2) that the attorney's deficient performance resulted in prejudice." *People v. Shaw*, 186 Ill. 2d 301, 332 (1998). To establish prejudice,

a defendant must demonstrate that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *People v. Richardson*, 189 Ill. 2d 401, 411 (2000). To establish prejudice, a defendant must offer more than "speculation or conjecture" (*People v. Holman*, 164 Ill. 2d 356, 369 (1995)), and the fact that another attorney with the benefit of hindsight would have handled the defendant's case differently does not establish that trial counsel's performance was deficient (*People v. Dobbs*, 353 Ill. App. 3d 817, 827 (2004)).

¶ 21 It is well-established that conjecture and speculation are insufficient to support an ineffective-assistance-of-counsel claim (*People v. Gosier*, 165 Ill. 2d 16, 24 (1995)), and dismissal of a postconviction claim is proper where the claim is unsupported by affidavits, records, or other evidence (*People v. Collins*, 202 Ill. 2d 59, 66 (2002)). Additionally,

"[a] claim that trial counsel failed to investigate and call a witness must be supported by an affidavit from the proposed witness.' The reason for such a requirement is clear. 'In the absence of such an affidavit, a reviewing court cannot determine whether the proposed witness could have provided testimony or information favorable to the defendant, and further review of the claim is unnecessary.'" *People v. Harris*, 224 Ill. 2d 115, 142 (2007) (quoting *People v. Enis*, 194 Ill. 2d 361, 380 (2000)).

¶ 22 In his postconviction pleadings, the defendant contended that his trial counsel was ineffective for failing to investigate whether A.R.'s family was acting in retaliation for his filing a DCFS complaint, that his trial counsel was ineffective for failing to investigate a previous false report by A.R. concerning sexual misconduct by her stepsiblings, and that his trial counsel was ineffective for failing to present evidence of his hiatal hernia and physical impossibility defense.

¶ 23 "[A] postconviction proceeding is not a substitute for a direct appeal, nor is it a second

direct appeal." *Harris*, 224 Ill. 2d at 128. A postconviction proceeding is, rather, a collateral attack affording limited review of constitutional matters not previously adjudicated. *People v. Greer*, 212 Ill. 2d 192, 203 (2004). As such, issues that could have been raised on direct appeal, but were not, are procedurally defaulted. *People v. Rissley*, 206 Ill. 2d 403, 412 (2003). "Waiver will apply unless principles of fundamental fairness require review of the issue." *People v. Jackson*, 205 Ill. 2d 247, 274 (2001). "Fundamental fairness" requires a court to review procedurally defaulted claims in collateral proceedings only when the defendant shows cognizable "cause" for his failure to make timely objection and shows "actual prejudice" flowing from the error complained of. *People v. Hudson*, 195 Ill. 2d 117, 123 (2001). Constitutionally ineffective assistance of appellate constitutes cause. *Jackson*, 205 Ill. 2d at 274. Attorney error falling short of constitutionally ineffective assistance of counsel, however, does not constitute cause. *Id.* at 274-75.

¶ 24 The defendant could have raised his ineffective-assistance-of-trial-counsel issues on direct appeal, but he did not. Although ineffective assistance of appellate counsel may constitute cause, the defendant argues that his appeal "does not rely on a theory of ineffective assistance of direct appeal counsel." Instead, the defendant sets forth no cognizable cause for his failure to make a timely objection on direct appeal and, as explained below, shows no actual prejudice flowing from the errors. See *Hudson*, 195 Ill. 2d at 123. Thus, he has forfeited the claims he raises in this appeal.

¶ 25 Absent default, we further note that the defendant's petitions were not supported by affidavits, records, or other evidence identifying with reasonable certainty the sources, character, and availability of the alleged evidence supporting the petition's allegations. The defendant commences proceedings under the Act by filing a petition in the circuit court in which the conviction occurred. 725 ILCS 5/122-1(b), (West 2010); *Collins*, 202 Ill. 2d at 65. The defendant's petition must be both verified by affidavit and supported by "affidavits,

records, or other evidence." 725 ILCS 5/122-1(b), 122-2 (West 2010); *Collins*, 202 Ill. 2d at 65. "[T]he affidavits and exhibits which accompany a petition must identify with reasonable certainty the sources, character, and availability of the alleged evidence supporting the petition's allegations." *People v. Delton*, 227 Ill. 2d 247, 254 (2008). If this documentation is not attached, the petition must explain why it is unavailable. 725 ILCS 5/122-2 (West 2010).

¶26 Although a *pro se* postconviction petitioner is not expected to set forth a complete and detailed factual recitation, his petition must set forth some facts which can be corroborated and are objective in nature or contain some explanation why such facts are absent. *People v. Wilborn*, 2011 IL App (1st) 092802, ¶ 55; 725 ILCS 5/122-2 (West 2006). "A postconviction petition that is not supported by affidavits or other supporting documents is generally dismissed without an evidentiary hearing unless the petitioner's allegations stand uncontradicted and are clearly supported by the record." *People v. Waldrop*, 353 Ill. App. 3d 244, 249 (2004). The failure to attach the necessary "affidavits, records, or other evidence" or to explain their absence is "fatal" to a postconviction petition and by itself justifies the petition's summary dismissal. *Collins*, 202 Ill. 2d at 66.

¶27 Contrary to the clear mandate of section 122-2 of the Act, the defendant's allegations were unsupported by "affidavits, records, or other evidence," other than the defendant's own averments, and offered no explanation for the absence of such documentation. See 725 ILCS 5/122-2 (West 2010); *People v. Treadway*, 245 Ill. App. 3d 1023, 1025 (1993) ("A circuit court will generally dismiss a post[]conviction petition which is not supported by affidavits other than the defendant's averments."). The defendant failed to attach affidavits and exhibits identifying with reasonable certainty the sources, character, and availability of evidence supporting the petition's allegations. See *Delton*, 227 Ill. 2d at 254. This failure alone justified the dismissal of the defendant's petition. See *Collins*, 202 Ill. 2d at 66.

¶ 28 Notwithstanding the defendant's forfeiture for failing to raise his claims on direct appeal and notwithstanding his failure to support his petition with supporting affidavits, records, or evidence other than his own averments, we find his claims lack merit and do not establish a substantial showing of a constitutional violation that warrants further postconviction proceedings.

¶ 29 The defendant alleged in his postconviction pleadings that his trial counsel was ineffective for failing "to adequately investigate the motivations of the named victim and her family in making the claims of which the [defendant] was accused and later convicted." The defendant alleged that trial counsel failed to investigate whether the complainant and her family acted in retaliation for the defendant's filing of a complaint with DCFS about the conduct of A.R. and her care.

¶ 30 Trial counsel has a professional duty to conduct reasonable investigations or to make a reasonable decision that particular investigations are unnecessary. *People v. Domagala*, 2013 IL 113688, ¶ 38. "This duty derives from counsel's basic function 'to make the adversarial testing process work in the particular case.' " *Id.* (quoting *Strickland*, 466 U.S. at 690). "The duty includes the obligation to independently investigate any possible defenses." *Id.* Counsel's alleged lack of investigation is to be judged against a standard of reasonableness given all of the circumstances, while " 'applying a heavy measure of deference to counsel's judgments.' " *Id.* (quoting *People v. Kokoraleis*, 159 Ill. 2d 325, 330 (1994)). Where the record establishes that counsel had reason to know, from an objective standpoint, that a possible defense, such as insanity, was available, his failure to fully investigate the defense can constitute ineffective assistance of counsel. *Id.*

¶ 31 As noted by the State, the defendant failed to set forth when the DCFS complaint was made, whether A.R. and her family were aware of this complaint, or whether he communicated the information to his trial counsel. At the hearing on the defendant's

postconviction pleadings, his postconviction counsel indicated that the DCFS complaint may have been filed after trial.

¶ 32 We therefore reject the defendant's assertion that his trial counsel was ineffective for failing to investigate and present evidence at trial regarding a complaint not yet filed with DCFS. We reject the defendant's contention that his trial counsel was ineffective for failing to investigate whether a potentially impending complaint or threat of complaint may have served to motivate A.R.'s family to put forth false allegations against the defendant. Similar evidence, namely that the defendant's suspicions of A.R.'s parents' lifestyle and his monitoring of their activity created a motive for false allegations, was presented and rejected at trial. The additional evidence would have been cumulative and of very little value. We thus conclude that the defendant's claim lacks merit. The failure to present evidence at trial that the defendant had planned to file a DCFS complaint did not render trial counsel's performance deficient, nor did it affect the outcome of the defendant's trial.

¶ 33 The defendant also argued that trial counsel was ineffective for failing to investigate claims that A.R. made prior false allegations of sexual misconduct against her stepsiblings. As noted by the State, the defendant puts forth no facts concerning time, place, or the specification of the allegations. The defendant offered little more than speculative assertions and bare conclusions. To establish prejudice to support an ineffective-assistance-of-counsel claim, a defendant must offer more than speculation or conjecture. See *Holman*, 164 Ill. 2d at 369.

¶ 34 The defendant also contended that his trial counsel was ineffective for failing to investigate whether the defendant's hiatal hernia condition, for which he was hospitalized from April 17 through April 24, 2006, would have rendered the alleged sexual penetration on April 15, 2006, "physically impossible for the [defendant] to have committed."

¶ 35 Initially we note that "sexual penetration" in the context of predatory criminal sexual

assault of a child is a statutorily defined term. In order to be convicted of predatory criminal sexual assault of a child, the accused must be 17 years of age or over, the victim must be under 13 years of age, and the accused must commit "an act of sexual penetration" with the victim. 720 ILCS 5/12-14.1(a)(1) (West 2004, 2006). "Sexual penetration" is defined as "any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth or anus of another person ***." 720 ILCS 5/12-12(f) (West 2006). "Evidence of emission of semen is not required to prove sexual penetration." 720 ILCS 5/12-12(f) (West 2006).

¶ 36 The testimony at trial revealed that in the summer of 2005 and on April 16, 2006, the defendant committed predatory criminal sexual assault of a child by placing his penis into A.R.'s mouth, inserting his penis into her vagina, and inserting a "sex toy" into A.R.'s vagina. As noted by the State, A.R. did not testify that the defendant's penis was erect or that he ejaculated during the April 16, 2006, contact. A.R. and Hodge testified, however, that the defendant made the contact required to prove predatory criminal sexual assault of a child. The defendant provides no factual basis to support his assertion that his hiatal hernia condition prevented the slight contact required to commit the acts for which he was convicted.

¶ 37 In sum, the defendant has failed to put forth facts to support that his trial attorney's performance fell below an objective standard of reasonableness or that his attorney's alleged errors affected the result of his trial. The defendant is unable to establish either prong of *Strickland* with regard to any of his contentions. Accordingly, the defendant failed to make a substantial showing that his conviction resulted from a violation of a constitutional right. See *Lane*, 398 Ill. App. 3d at 296. Therefore, the circuit court properly dismissed the defendant's petition for postconviction relief.

¶ 38

CONCLUSION

¶ 39 The defendant has failed to meet his burden of establishing a substantial showing of a constitutional violation. Accordingly, we affirm the circuit court's dismissal of the defendant's petitions for postconviction relief.

¶ 40 Affirmed.